

IN THE SUPERIOR COURT OF FLOYD COUNTY  
STATE OF GEORGIA

**FILED IN OFFICE**

SEP 23 2014

GEORGIACARRY.ORG, INC., and )  
DAN HAITHCOCK, )

Plaintiffs )  
v. )

TOM CALDWELL, individually and in )  
His official capacity as Chief Deputy of )  
The Floyd County, Georgia Sheriff's )  
Office, and )  
FLOYD COUNTY, GEORGIA, )

Defendants )

Case No.

14CV01823JFL002

CLERK

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR AN INTERLOCUTORY  
INJUNCTION**

Plaintiffs commenced this action to contest Defendants' threatened enforcement of Floyd County Ordinance Article 1, Section 2-3-3(h). The "Wings Over North Georgia" airshow is scheduled to be held at the Floyd County airport on October 18 and 19, 2014. Plaintiff Haithecock intends to attend the airshow and desires to carry with him a handgun, in accordance with state law and in case of confrontation. Defendants, however, have threatened to enforce the Ordinance against him. The Ordinance purports to ban firearms at the airport, despite clear authority preemption such a ban. Plaintiffs therefore seek an interlocutory injunction to prevent enforcement of the ordinance pending an adjudication on the merits.

**Argument**

A plaintiff may obtain an interlocutory injunction if he would be irreparably harmed if it were not granted and if it would not operate oppressively on the defendant's rights to grant it. The court may consider the likelihood of success on the merits, but that issue is not dispositive. *Garden Hills Civic Assoc. v. MARTA*, 273 Ga. 280, 282, 539 S.E.2d 811, 815 (2000). An

interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication. There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy. *Haygood v. Tilley*, 295 Ga.App. 90, 92 (2008).

The Floyd County Ordinance Article 1, Section 2-3-3(h) provides:

*Deadly weapons at public gatherings:* No persons, except peace officers, duly authorized post office and airport employees or members of the Armed Forces of the United States on official duty, shall carry loaded or unloaded weapons on the airport property without permission from the airport manager. Nor shall any person store, keep, handle, use, dispense or transport at, in or upon the airport, any hazardous or dangerous articles (as defined by the department of transportation regulations for transportation of explosives or other dangerous articles), at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

Defendant Caldwell, the Chief Deputy of the Floyd County Sheriff's Office, has threatened Haithcock with enforcement of the Ordinance at the airshow, presumably to include arrest and prosecution if Haithcock carries a firearm at the airshow. Caldwell specifically told Haithcock to leave "weapons and agendas outside the gate."<sup>1</sup>

It is clear that the Ordinance, on its face and as applied by Caldwell, purports to regulate the possession and carrying of firearms on the airport property. The airport is owned by Floyd County. Such an ordinance, however, is preempted by state law:

[N]o county ... by ordinance ... shall regulate in any manner ... the possession ... [or] carrying ... of firearms or other weapons.

O.C.G.A. § 16-11-173(b)(1)(B).

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<sup>1</sup> Plaintiffs note the irony that Caldwell apparently has every intention of bringing his agenda of banning firearms inside the gate.

It is not necessary for the Court to dwell for long on the meaning of the statute, because Plaintiff GeorgiaCarry.Org, Inc. (“GCO”) already has litigated it. In *GeorgiaCarry.Org, Inc. v. Coweta County*, 288 Ga.App. 748 (2007) the Court ruled:

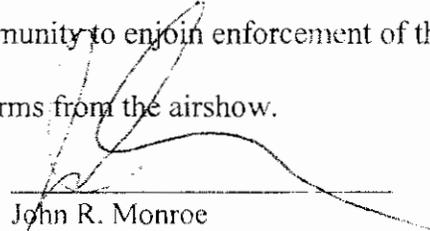
[T]he plain language of the statute expressly precludes a county from regulating “in any manner [the] . . . carrying . . . of firearms.” Under these circumstances, the preemption is express, and the trial court erred in concluding otherwise. . . . [T]he language of the statute is not doubtful. It follows that the trial court erred in denying the Appellants’ motion for summary judgment and granting the motion filed by Coweta County.

In the case, Coweta County had an ordinance banning firearms from county owned recreation areas. Despite repeated requests by GCO to repeal the ordinance as preempted by O.C.G.A. § 16-11-173, the county refused to do so. GCO sued to have enforcement of the ordinance enjoined. The trial court denied GCO’s motion for summary judgment and granted the county’s. The Court of Appeals reversed, with the language cited above.

There is no meaningful difference between Coweta County’s ordinance banning firearms from recreation areas and Floyd County’s ordinance banning firearms on airport property. In both instances, the county governments are violating O.C.G.A. § 16-11-173 by enacting ordinances that regulate possession and carrying of firearms on county property. The legislature has expressly withheld the power of counties to do so. Defendants simply cannot prevail on the merits of this case, and their insistence on enforcing an illegal ordinance is frivolous.

Defendants have no legitimate interest in enforcing an illegal ordinance, so they cannot be harmed by an injunction preventing them from doing so. On the other hand, Plaintiffs are harmed by the threatened enforcement of the illegal ordinance against them, because such threat chills their exercise of constitutionally and statutorily protected conduct – peaceably carrying firearms in case of confrontation.

It is therefore in the best interest of the community to enjoin enforcement of the Ordinance, or any other rule purporting to ban firearms from the airshow.



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